IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.344 OF 2006

Atco Industries Limited. Petitioner
vs.
Union of India & ors. Respondents

Mr.A.S.Kamat with Mr.Sachin Chandarana & Mr.Samrat Rasal i/b.M/s.M.K.Ambalal & Co. for the petitioner.

Ms.S.V.Bharucha with Mr.Y.R.Mishra for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 17th April, 2006

P.C.

We heard Mr.A.S.Kamat, the advocate for the petitioner.

2. The petitioner, by means of this writ petition, seeks to challenge the order dated 31st August, 2004 passed by the Commissioner, Central Excise and Customs, Daman and the orders dated 21st February, 2005 and 29th July, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai.

3. Vide order dated 31st August, 2004, the Commissioner, Central Excise and Customs, Daman ordered confiscation of the seized poly carbonate bottles aggregating valued at Rs.1,19,43,500/-. As the seized

goods were originally released provisionally, the Commissioner ordered appropriation of the Bank Guarantee amounting to Rs.35,83,050/- towards fine in lieu of confiscation. The Commissioner confirmed the central Excise duty amounting to Rs.2,39,83,421/- and also imposed penalty amounting to Rs.2,39,83,421/-.

4. The petitioner preferred appeal against the order dated 31st August, 2004 to the Tribunal and also made an application for waiver of pre-deposit.

5. The Tribunal vide its order dated 21st February, 2005 directed the petitioner to deposit a sum of Rs.50 lacs towards the duty demand by 31st March, 2005 and compliance was to be reported on 4th April, 2005. It was made clear in the order dated 21st February, 2005 that in case the pre-deposit was not made, the appeal shall be dismissed without any further notice to them.

6. The petitioner did not comply with the order dated 21st February, 2005 and instead made an application for modification of the order dated 21st February, 2005. The advocate for the petitioner is not in a position to tell us the date of the application. The copy of that application that has been placed on record is incomplete.

7. Be that as it may, the Tribunal fixed the hearing of the application on 29th July, 2005 and notice of the hearing of the said application was sent in advance to the petitioner. However, none appeared on behalf of the petitioner before the Tribunal and, consequently, the Tribunal dismissed the application and for want of compliance of order dated 21st February, 2005 dismissed the appeals as well.

8. The advocate for the petitioner raised twofold contention before us. First, he contended that the order dated 31st August, 2004 passed by the Commissioner, Central Excise and Customs is bad in law having been passed in breach of the principles of natural justice. Second, he contended that on 29th July, 2005 fax was sent to the Tribunal that their counsel who was to come from New Delhi could not reach because of non-availability of flight and Mr.Nagarkar, who was to appear was not well for the last three days. Despite that the Tribunal dismissed the application in default and, consequently, the appeals.

9. None of the contentions appeals us. So far as the challenge to the order dated 31st August, 2004 is concerned, we are of the view that the said challenge does not deserve to be considered on merits as the petitioner had preferred appeal against the order dated

31st August, 2004 before the Tribunal. The Tribunal substantially waived the pre-deposit and permitted the petitioner to deposit Rs.50 lacs only though the demand of excise duty amounted to Rs.2,39,83,421/- and penalty was also imposed to the tune of Rs.2,39,83,421/-. The petitioner failed to comply with the said direction. The legality of the correctness of the order dated 31st August, 2004 passed by the Commissioner, therefore, does not deserve to be considered.

10. In so far as the second contention is concerned, suffice it to say that despite the post flood condition in the city of Mumbai because of heavy rains on 26th July, 2005 and if the counsel for the petitioner could not reach from Delhi, some representative of the petitioner-company at least could have appeared before the Tribunal on 29th July, 2005. The fax is said to have been sent to the Tribunal on 29th July, 2005 but that was sent at 02.40 p.m. By that time the order seems to have been passed by the Tribunal. The predeposit order was made on 21st February, 2005 and the petitioner was given sufficient time. If for a period of 5 months, the pre-deposit was not made, obviously, the appeal was liable to be dismissed and the Tribunal cannot be said to have erred in dismissing the appeal for non-compliance of the order dated 21st February, 2005.

11. No case for invocation of extraordinary jurisdiction is made out.

12. Writ petition is dismissed in limine.

(R.M.LODHA,J.)

(J.P.DEVADHAR,J.)